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W.C., claiming as widow of J.C., Appellant)	
)	
and)	Docket No. 19-0351
)	Issued: August 4, 2020
DEPARTMENT OF LABOR, EMPLOYMENT)	
& TRAINING ADMINISTRATION, Seattle, WA,)	
Employer)	
)	

John W. Milton, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2018 appellant, the widow of the deceased employee, filed a timely appeal from a September 17, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² She subsequently authorized counsel to represent her before the Board. As more than 180 days have elapsed since OWCP's last merit decision, dated December 13, 2017, to the filing

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant timely requested oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated May 13, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0351 (issued May 13, 2020).

of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 25, 1982 the employee, then a 34-year-old federal representative, filed an occupational disease claim (Form CA-2) alleging that he sustained stress, hypersensitivity, and depression causally related to factors of his federal employment. OWCP accepted the claim for depression and paid him wage-loss compensation for total disability from October 31, 1981 to June 1, 2001.

By decision dated September 20, 2001, OWCP reduced the employee's wage-loss compensation based on its finding that his actual earnings as a minister, \$350.00 per week, effective June 1, 2001, fairly and reasonably represented his wage-earning capacity.

The employee remained on the periodic compensation rolls until his death on December 28, 2015.

On January 19, 2016 appellant, the employee's widow, filed a claim for compensation by widow, widower and/or children (Form CA-5). She submitted the employee's death certificate, which identified acute respiratory failure as the immediate cause of death. The contributing causes of death were identified as diabetes, chronic kidney disease, and hypertension.

In a report dated April 15, 2016, Dr. Marvin L. Crawford, a Board-certified internist, advised that beginning in October 2014 the employee had anxiety and depression associated with church relations and legal challenges by the church. He was hospitalized for a pulmonary embolus. The employee became sedentary due to his stress and depression. Dr. Crawford attributed his increased depression to his work at the church and associated legal issues. He found that the employee's worsening depression "had an adverse effect upon his health and led to his demise on December 28, 2015."

On May 22, 2016 Dr. Albert A. Rizzo, a Board-certified internist and pulmonologist acting as an OWCP district medical adviser (DMA), advised that a sedentary lifestyle could have predisposed the employee to thromboembolic disease and death by respiratory failure.

OWCP referred the record to Dr. Edward J. Rhoads, a Board-certified psychiatrist, for a second opinion. In an accompanying statement of accepted factors, it identified the compensable employment factor as the employee's supervisor telling him in April 1990 that he was functionally illiterate with respect to his position.

³ 5 U.S.C. § 8101 *et seq.*

In a report dated July 10, 2017, Dr. Rhoads noted that, after the employee left federal employment, he worked successfully as the owner of a sporting goods store. He subsequently attended seminary and began working as an assistant minister. Dr. Rhoads found that the employee's worsening depression resulted from "declining relationships at the church" rather than work factors from 35 years earlier.

OWCP determined that a conflict existed between Dr. Crawford and Dr. Rhoads regarding whether the employee's employment-related depression contributed to his death. It referred the case record to Dr. Harshad Patel, a Board-certified psychiatrist, for an impartial medical examination.

In a report dated November 20, 2017, Dr. Patel reviewed the employee's history of injury and the medical evidence of record. He found that his worsening depression resulted from conflicts with church leadership rather than his job 34 years earlier.

By decision dated December 13, 2017, OWCP denied appellant's survivor benefits claim. It found that Dr. Patel's opinion constituted the special weight of the evidence and established that the employee's death was not caused or aggravated by his depression that resulted from the compensable employment factor.

On June 19, 2018 appellant requested reconsideration. She asserted that OWCP noted that she had submitted 800 rather than 8,000 pages of medical documents and questioned whether all evidence had been considered. Appellant advised that it was unclear whether the employee's sporting goods business was successful or whether he had completed seminary without assistance as he was functionally illiterate. She contended that as he was receiving workers' compensation until his death based on a job that OWCP approved, it should be responsible for any condition due to the approved job.

In support of her request, appellant resubmitted the April 15, 2016 report from Dr. Crawford, the May 22, 2016 report from Dr. Rizzo, the June 23, 2017 report from Dr. Rhoads, the November 20, 2017 report from Dr. Patel, the statement of accepted facts, and OWCP's memorandum of referral for resolution of a conflict dated August 7, 2017.

By decision dated September 17, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a). It found that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a

⁴ 5 U.S.C. § 8128(a).

specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Appellant questioned whether OWCP had reviewed all of the medical evidence submitted, but she did not identify a particular report or documents that were not considered. She noted that it was unclear whether the employee's sporting goods store was successful or whether he had completed seminary without assistance. Appellant further contended that OWCP had been paying the employee wage-loss compensation for partial disability based on a job that it had approved and thus should be responsible for any condition that arose due to the approved job. Her assertions do not show legal error by OWCP or constitute a new and relevant legal argument as they are not relevant to the underlying issue of whether the employee's death was causally related to his emotional condition arising from the accepted work factor. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Accordingly, the Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant resubmitted Dr. Crawford's April 15, 2016 report, Dr. Rizzo's May 22, 2016 report, Dr. Rhoads' June 23, 2017 report, and Dr. Patel's November 20, 2017 report, and correspondence from OWCP, all of which were previously of record. The Board

⁵ 20 C.F.R. § 10.606(b)(3); *see also B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also A.P.*, Docket No 19-0224 (issued July 11, 2019).

⁸ *Id.* at § 10.608(b); *A.G.*, Docket No. 19-0113 (issued July 12, 2019).

⁹ *R.M.*, Docket No. 19-0060 (issued April 15, 2019).

¹⁰ *See Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

has held that evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

On appeal appellant contends that she and her daughter were entitled to survivor's benefits as the employee was receiving compensation from OWCP at the time of his death. She notes that depression is common with physical disorders. As noted above, the Board lacks jurisdiction over the merits of the claim.

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2020
Washington, DC

Alec J. Koromilas, Chief
Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *H.A.*, Docket No. 18-1253 (issued April 23, 2020); *Richard Yadron*, 57 ECAB 207 (2005).

¹² 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹³ *D.G.*, Docket No. 19-1348 (issued December 2, 2019).